

14 APR 1982

Gentlemen:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

You were formed [REDACTED], as a group of individuals to promote, improve, and preserve the profession of clowning; and to educate your members and the general public in the wholesome and clean entertainment that your profession provides; convey the traditional and advanced techniques of the art of clowning to those in the profession and provide the basic techniques of the art for initiates to the profession.

Membership is open to anyone sixteen years of age or over that is desiring to pursue the profession of the art of clowning. Members are required to belong to [REDACTED]. Total number of members in [REDACTED], all of whom are clowns, including [REDACTED] members on your board of directors.

The primary activities of [REDACTED] are clown entertainment services performed at birthday parties and at various businesses. The more experienced clowns teach clowning. A fee of \$[REDACTED] an hour for two or more clowns is charged for a performance. A minor part of your activity is performing once a month for nursing homes and hospitals. Clown novelties are also sold.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Code	Initial	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname		[REDACTED]					

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his/her family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that an organization may meet the requirements of section 501(c)(3) of the Internal Revenue Code even though it operates a trade or business as a substantial part of its activities. On the other hand, if the organization has as its primary purpose or activity the carrying on of an unrelated trade or business, then it may not be exempt.

Business has been defined as activities for profit, or as activity for profit by service to the general public.

Revenue Ruling 72-369, 1972-2 Cumulative Bulletin 245, holds that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) because providing such service on a regular basis for a fee based on cost is a trade or business ordinarily carried on for profit and lacks the donative element necessary to establish the activity as charitable.

In the case of Better Business Bureau v. U.S., 326, U.S. 279 (1945) 51-1650, it was held that the presence of a single noncharitable or noneducational purpose; if substantial in nature, will preclude an organization from obtaining 501(c)(3) regardless of the number or importance of its charitable or educational purposes.

If you are operating a trade or business for the purpose of enabling your members to further their own interests, the art of the business is to lose the donative element of charity and have only a commercial and noneducational activities.

Based on information supplied, we conclude you are not exempt under section 501(c)(3) of the Code; therefore, you are required to file Federal income tax returns on Form 1120.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

Enclosure

Form 6018

Publication 892